

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DONALD PILSON,)
v.)
Plaintiff,)
BOB'S MOTORS PPR, et al.,)
Defendants.)
No. CIV-23-676-R

ORDER

Before the Court is Defendant Bob Brooks Motor Co.’s Motion to Dismiss [Doc. No. 9] seeking dismissal pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff, who is appearing *pro se*¹ and *in forma pauperis*, has responded in opposition [Doc. No. 10] and the matter is now at issue. Additionally, pursuant to 28 U.S.C. § 1915(e)(2), a court is required to dismiss an *in forma pauperis* action “at any time” if the action fails to state a claim on which relief may be granted.

Federal Rule of Civil Procedure 8(a) requires a pleading to contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

¹ Because Petitioner is proceeding pro se, the Court affords his materials a liberal construction but does not act as his advocate. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Plaintiff's Complaint, even when afforded a liberal construction, fails to satisfy these requirements.

First, the Complaint does not include any statement of the grounds for the court's jurisdiction. Second, the Complaint fails to state a plausible claim to relief. “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting the *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Complaint consists of three general, conclusory allegations that fail to show an entitlement to relief or give Defendants fair notice of the grounds upon which the claim rests. Last, the Complaint does not include an adequate demand for relief as it states merely that Plaintiff is “asking for justice.” Although Plaintiff has included some additional factual allegations in his response brief, these allegations are not part of the pleadings and “are not determinative of whether Plaintiff adequately stated claims in his Complaint.” *Scott v. Hormel*, No. CIV-18-395-SLP, 2019 WL 3935101, n.2 (W.D. Okla. Aug. 20, 2019).

Accordingly, Defendant's Motion to Dismiss [Doc. No. 9] is GRANTED and Defendant Bob Brooks Motor Co. is dismissed without prejudice. The remainder of the action is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Although Plaintiff has failed to state a plausible claim, the Court will withhold entry of judgment in Defendants' favor to permit Plaintiff an opportunity to properly seek leave to amend. Should Plaintiff fail to file a motion for leave to amend within 21 days of the date of this Order, this action will be dismissed without prejudice.

IT IS SO ORDERED this 26th day of September, 2023.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE